

**ORIGINAL**

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6  
7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
9

10 SCOT DAVIS, et al.,

11 Plaintiffs,

12 vs.

13 CITY OF BEAUMONT,  
et al.,

14 Defendants.

CASE NO. CV 12-04990 ABC (SHx)

**STATEMENT OF  
UNCONTROVERTED FACTS  
SUBMITTED IN SUPPORT OF  
DEFENDANT CITY'S PARTIAL  
MOTION FOR SUMMARY  
JUDGMENT**

Trial Date: None Set

15  
16 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

17 Defendant, CITY OF BEAUMONT, submits its Statement of Uncontroverted  
18 Facts in Support of City's Motion for Partial Summary Judgment as follows. The  
19 referenced Exhibits are concurrently filed.  
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**SEPARATE STATEMENT OF UNDISPUTED FACTS**

<u><b>Moving Party's Uncontroverted</b></u>	<u><b>Opposing Party's Response and</b></u>
<u><b>Facts and Supporting Evidence:</b></u>	<u><b>Supporting Evidence:</b></u>
<p>1. All Beaumont police officers below the rank of Sgt. are members of the Beaumont Police Officer's Association ("BPOA") [Ex. 1, Deposition of Davis, 9:18-20]</p>	
<p>2. Neither Davis, Harris or Ford were officers of the BPOA at the time of these incidents. [Ex.1, Deposition of Davis, 11:25-12:6]</p>	
<p>3. BPOA held a meeting in April 2011 wherein a discussion of "evaluating" Chief Coe occurred. [First Amended Complaint ("FAC"), para. 14-16]</p>	
<p>4. At the time of the meeting, plaintiff Davis' concerns included allegedly harsh discipline, "fear of management", etc. These concerns "existed at the time of the meeting" [Ex. 1, Deposition of Davis, 22:4 – 24:2; 24:14-18]</p>	

1 <u>Moving Party's Uncontroverted</u>	<u>Opposing Party's Response and</u>
2 <u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>3</p> <p>4 5. After the meeting, Davis</p> <p>5 provided information included in the</p> <p>6 letter as "Officer # 3." [Ex. 1,</p> <p>7 Deposition of Davis, 15:8-18].</p>	
<p>8 6. The letter was submitted to the</p> <p>9 City on or about April 20, 2011 by</p> <p>10 then-BPOA president Chris Ramos.</p> <p>11 [Ex. 1, Depo of Davis, 20:18-23;</p> <p>12 FAC, para. 15.]</p>	
<p>13 7. Ramos, the BPOA president who</p> <p>14 signed and delivered the April 2011</p> <p>15 letter, was promoted from corporal to</p> <p>16 sergeant AFTER the letter was</p> <p>17 delivered. [Ex. 1, Davis deposition,</p> <p>18 49:17 – 50:1]</p>	
<p>19 8. Davis was subpoenaed to court</p> <p>20 and was contacted to comply with the</p> <p>21 subpoena on or about June 16, 2011.</p> <p>22 He arrived late at court. [Ex. 1,</p> <p>23 Deposition of Davis, 31:21 – 32:5]</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p>	

1	<b><u>Moving Party's Uncontroverted</u></b>	<b><u>Opposing Party's Response and</u></b>
2	<b><u>Facts and Supporting Evidence:</u></b>	<b><u>Supporting Evidence:</u></b>
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4	9. Davis was first advised of an	
5	intent to discipline him on July 28,	
6	2011 - three months after the POA	
7	meeting and letter. [Ex. 1, Deposition	
8	of Davis, 34: 1-8, docs. CITY DAVIS	
9	0010-14]	
10	10. Following a Skelly meeting	
11	with Chief Coe, Davis was advised of	
12	a proposed discipline as follows:	
13	discipline as follows: a 40-hour	
14	suspension to be held in abeyance for	
15	12 months and dismissed if there were	
16	no sustained complaints of	
17	misconduct of the same or similar	
18	nature during that period, and that	
19	although he would be removed from	
20	your assignment as a corporal, he	
21	would continue to receive pay as a	
22	corporal during that 12-month period	
23	[Ex. 1, Deposition of Davis, 34:14 –	
24	36:8; docs. CITY DAVIS 0014-15]	
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1 <u>Moving Party's Uncontroverted</u>	<u>Opposing Party's Response and</u>
2 <u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
3 4 11. Davis, as was his right, then 5 went to arbitration concerning his 6 discipline. The award of the arbitrator 7 was in his favor; as a result, he was 8 returned to his position and 9 assignment. [Ex. 1, Deposition of 10 Davis, 37:8 – 38:8, doc. 19]	
11 12. Davis did not request any 12 back pay following the arbitration 13 award. [Ex. 1, Deposition of Davis, 14 37:8 – 38:8]	
15 13. Davis in fact did not request to 16 return to his former detective 17 assignment. He expressed a 18 preference for a patrol corporal 19 assignment to a specific shift. That 20 request was honored. [Ex. 1, 21 deposition of Davis, 38:23 – 39:22; 22 docs CITY DAVIS 0020-21].	
23 14. Davis has requested a special 24 assignment since that date, and was 25 granted the assignment but chose not 26 to fill it. [Ex. 1, deposition of Davis, 27 41:11 – 42:21]	

1	<b><u>Moving Party's Uncontroverted</u></b>	<b><u>Opposing Party's Response and</u></b>
2	<b><u>Facts and Supporting Evidence:</u></b>	<b><u>Supporting Evidence:</u></b>
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4	15. Ford was hired as and still is a	
5	police officer; contrary to the	
6	allegations of the FAC (para. 12) he	
7	has never been promoted, never	
8	applied for promotion, and never	
9	applied for any special assignment	
10	[Ex. 2, Deposition of Ford, 9:16 –	
11	10:20]	
12	16. Ford did not contribute	
13	anything that was included in the	
14	letter to the City “evaluating” Chief	
15	Coe. [Ex. 2, Deposition of Ford,	
16	13:19 – 14:1]	
17	17. According to Ford, the	
18	concerns expressed as to why the	
19	review was to be done involved “past	
20	incidents” of discipline. [Ex. 2,	
21	Deposition of Ford, 12:22 – 13:2]	
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1	<b><u>Moving Party's Uncontroverted</u></b>	<b><u>Opposing Party's Response and</u></b>
2	<b><u>Facts and Supporting Evidence:</u></b>	<b><u>Supporting Evidence:</u></b>
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4	18. Contrary to the allegations of	
5	the FAC, Ford had in fact been	
6	disciplined prior to the April 2011	
7	meeting in a written reprimand [Ex. 2,	
8	Deposition of Ford, 22:2 – 12], and	
9	for damage to a vehicle [Ex. 2,	
10	Deposition of Ford, 24:13 –24]	
11	19. After the April 2011 meeting,	
12	Ford was first notified of an intent to	
13	discipline by a notice dated	
14	September 27, 2011. He had not been	
15	disciplined in the preceding four	
16	months [Ex. 2, Deposition of Ford,	
17	24:25 – 25:16; 34:16-25; doc. CITY	
18	FORD 0032-37]	
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1	<b><u>Moving Party's Uncontroverted</u></b>	<b><u>Opposing Party's Response and</u></b>
2	<b><u>Facts and Supporting Evidence:</u></b>	<b><u>Supporting Evidence:</u></b>
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5	20. Following a Skelly meeting	
6	with Chief Coe, Ford received a letter	
7	dated October 31, 2011 proposing a	
8	settlement of his discipline grievance,	
9	under the terms of which his	
10	discipline would be reduced to 12	
11	hours suspension, with the suspension	
12	held in abeyance for 12 months. He	
13	was not actually suspended without	
14	pay, and never had to serve any	
15	suspension [Ex. 2, Deposition of	
16	Ford, 35:16-21; 38:3-5; 42:6-8; doc.	
17	CITY FORD 0038].	
18	21. The traffic stop at issue in a part	
19	of Ford's discipline involved Ford	
20	having told a citizen that he could	
21	have his car towed for a registration	
22	violation. Ford ultimately learned that	
23	he could not, in fact, do so. [Ex. 2,	
24	Deposition of Ford, 42:20 – 43:11]	
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1 <u>Moving Party's Uncontroverted</u>	<u>Opposing Party's Response and</u>
2 <u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
3 4 22. Ford and the City settled the 5 discipline matter by way of a written 6 agreement. [Ex. 2, Deposition of 7 Ford, 36:5 – 37:6; 37:12 – 17; doc. 8 CITY FORD 0039-40#].	
9 23. Ford specifically agreed that he 10 was waiving any further appeal of the 11 disciplinary matter as part of the 12 settlement agreement. [Ex. 2, 13 Deposition of Ford, 39:23 – 40:5; doc. 14 CITY FORD 0040.	
15 24. Harris is a corporal with 16 Beaumont PD. [FAC, para. 13]	
17 25. However, at the present time, 18 Harris is serving as an “acting 19 sergeant” while another sergeant is on 20 leave, receiving sergeant’s pay. [Ex. 21 3, Deposition of Harris, 42:3 – 24]	
22 26. BPOA held a meeting in April 23 2011 wherein a discussion of 24 “evaluating” Chief Coe occurred. 25 [Ex. 3, Deposition of Harris, 13:22 – 26 14:1] 27	

1	<b><u>Moving Party's Uncontroverted</u></b>	<b><u>Opposing Party's Response and</u></b>
2	<b><u>Facts and Supporting Evidence:</u></b>	<b><u>Supporting Evidence:</u></b>
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4	27. After the meeting, Harris	
5	provided information included in the	
6	letter as "Officer #7." [Ex. 3,	
7	Deposition of Harris, 21:21 – 22:8].	
8	28. The letter was sent to the City	
9	on or about April 20, 2011. [FAC,	
10	para. 15].	
11	29. After the meeting and letter, in	
12	about May 2011, Harris was assigned	
13	to a detective position. [Ex. 3,	
14	Deposition of Harris, 23:17 – 24:17]	
15	30. Harris received a memo dated	
16	June 20 from the Department issued	
17	to all City Hall and Police Department	
18	employees directing all City Hall and	
19	Police Department employees to	
20	ensure that their vehicles were in	
21	compliance with Vehicle Code	
22	window tint requirements. [Ex. 3,	
23	Deposition of Harris, 26:20 – 28:9;	
24	doc CITY HARRIS 005-06.]	
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1 <u>Moving Party's Uncontroverted</u>	<u>Opposing Party's Response and</u>
2 <u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
3 4 31. The memo required that all 5 employees bring their vehicles into 6 compliance by June 30, 2011 [Ex. 3, 7 Deposition of Harris, 26:20 – 28:9; 8 doc CITY HARRIS 005-06.]	
9 32. Following receipt of the memo, 10 on July 5, 2011, Harris was picked up 11 at the Department by his wife, driving 12 a vehicle of which he was a registered 13 owner, which had an illegal tint. [Ex. 14 3, Deposition of Harris, 28:21 -29:10 15 doc. CITY HARRIS 0001]	
16 33. At the time Harris understood 17 that his vehicle was subject to the 18 Chief's memo; he had been required 19 to remove tint from other vehicles in 20 the past; and he did NOT think that 21 the vehicle code provisions 22 concerning tint did not apply to the 23 truck [Ex. 3, Deposition of Harris, 24 29:17-19; 30:15-25; 32:6-11] 25 26 27 28	

1 <u>Moving Party's Uncontroverted</u>	<u>Opposing Party's Response and</u>
2 <u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
34. Davis was first advised of an intent to discipline him on July 25, 2011. [Ex. 3, Deposition of Harris, 32:16 – 33:5, docs CITY HARRIS 007-010].	
35. The discipline was based on his failure to comply with the June 20 memo. [Ex. 3, Deposition of Harris, 32:16 – 33:5, docs CITY HARRIS 007-010].	
36. Following a Skelly meeting with Chief Coe, he was advised of a proposed discipline for failure to adhere to a department directive, including a reduction in rank, but not in pay, for a 6-12 month period [Ex. 3, Deposition of Harris, 33: 9 – 35:14 docs CITY HARRIS 0025-26]	

1 <u>Moving Party's Uncontroverted</u>	Opposing Party's Response and
2 <u>Facts and Supporting Evidence:</u>	<u>Supporting Evidence:</u>
<p>3</p> <p>4 37. Harris appealed the discipline,</p> <p>5 and then negotiated a settlement of</p> <p>6 the discipline matter. The settlement</p> <p>7 required a 40 hour suspension without</p> <p>8 pay. As a result of the settlement, he</p> <p>9 was returned to his corporal rank and</p> <p>10 assignment as of February 2, 2012.</p> <p>11 [Ex. 3 Deposition of Harris, 36:6 –</p> <p>12 37:18; doc. CITY HARRIS 0027-28]</p>	
<p>13 38. As part of the settlement of the</p> <p>14 discipline matter, Harris agreed that</p> <p>15 this settlement was a “Final</p> <p>16 disposition and resolution, plaintiff</p> <p>17 agrees no further appeal”; this was “a</p> <p>18 final resolution of [Harris’] appeal of</p> <p>19 the disciplinary process” [Ex. 3,</p> <p>20 Deposition of Harris, 37:19 – 24; doc.</p> <p>21 CITY HARRIS 28]</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p>	

1	<b><u>Moving Party's Uncontroverted</u></b>	<b><u>Opposing Party's Response and</u></b>
2	<b><u>Facts and Supporting Evidence:</u></b>	<b><u>Supporting Evidence:</u></b>
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4	39. In each instance wherein one of	
5	the plaintiffs was disciplined, Chief	
6	Coe recommended a lesser degree of	
7	discipline than was initially proposed.	
8	The disciplinary actions were	
9	believed necessary to maintain the	
10	integrity of the department, promote	
11	good conduct, and to correct	
12	perceived errors in judgment. [Coe	
13	Declaration, at paras. 3 and 4].	
14	40. Chief Coe did not retaliate	
15	against any plaintiff; in fact, he	
16	promoted Harris to detective, and then	
17	to acting sergeant, after the April	
18	2011 meeting and letter; he approved	
19	Davis' post-Arbitration choice of	
20	assignment and shift; he promoted the	
21	BPOA president, Chris Ramos, from	
22	corporal to sergeant after the April	
23	2011 POA meeting and letter. [Coe	
24	Declaration, at paras. 3 and 4].	

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1 41. Since the April 2011  
2 meeting/letter, the department created  
3 two additional Sergeant positions and  
4 tested in-house. Neither Davis nor  
5 Ford competed, but two POA  
6 members were promoted from that  
7 process; and Harris, who did not  
8 promote in that process, has been  
9 appointed to an Acting Sergeant  
10 position.

11 42. The City of Beaumont's  
12 grievance process for discipline  
13 matters calls for the aggrieved  
14 employee to first participate in  
15 mediation; then binding arbitration if  
16 mediation does not resolve the  
17 dispute. Only Cpl. Davis actually  
18 carried through the process to its  
19 conclusion. [Coe Declaration, at para.  
20 5].  
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1 DATED: \_\_\_\_\_, 2013 ARTHUR K. CUNNINGHAM  
2 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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4

5 By:   
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7 Arthur K. Cunningham  
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9 Attorneys for Defendant CITY OF  
10 BEAUMONT  
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**FEDERAL COURT PROOF OF SERVICE**

Davis v City of Beaumont - File No. 25401.12

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 650 East Hospitality Lane, Suite 600, San Bernardino, CA 92408. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On June 3, 2013, I served the following document(s): **STATEMENT OF UNCONTROVERTED FACTS SUBMITTED IN SUPPORT OF DEFENDANT CITY'S PARTIAL MOTION FOR SUMMARY JUDGMENT**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Michael A. McGill  
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367 North Second Street  
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909-985-3299 (facsimile)  
**Attorneys for Plaintiffs**  
**SCOT DAVIS, JEREMY HARRIS**  
**and BRIAN FORD**

The documents were served by the following means:

- ☒ (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and I deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.
- ☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the State of CALIFORNIA that the foregoing is true and correct.

Executed on June 3, 2013, at San Bernardino, California.

  
Sharon D. Moore